Resurrender of Samuel

B

General and Revenue Secretariat | File No. 79 of 1937. | [App. F. III—2

Serial No.

× please read 66 79-37-2 recorded separately

12 Issued Pl 1339 × 4th June 38 asking whether resurrender is necessary under the circumstances

13 From
The Secretary to the Hon'ble the Resident
F 14(46)-37 Dt 9.7.38

States that the Govt of Mysore will presumably follow the same procedure as is prescribed by the order of the Govt of Madras No 2237 Dt 29.6.33.

(1) Submitted With References for orders.
(It is not known whether the Convict Samuel has to be resurrendered. It can be seen from this Office letter Dt 18.4.38 to the Residency that Samuel was convicted for a period of 12 weeks in the aggregate on 2-3-1938 and has presumably this period expired on 2-6-1938).

May 9

(2) It is assumed from the Residency letter that in future the Convicts ~~are~~ undergoing imprisonment for failure to furnish Security

NOTE—Contn. Sheet.

WD 0284—GPB—30,000—13-8-37

4 Extradition of Fugitives

File No. of 193 | General and Revenue Secretariat

~~Would~~ in the Mysore Jails have to be surrendered to British Govt for ~~repatriation~~ without any demand for ~~reimbursement~~ from British India.

Cold for orders.

(2) Till the passing of the Extradition Act VI of 1939, surrender of persons undergoing imprisonment in Mysore was regulated by the notification of 20th July 1907. This notification ~~delays~~ delays surrender being made only of persons undergoing imprisonment for an extraditable offence. In respect of other cases, para 3 of the Notification gave discretion to Govt to direct or to refuse surrender as the case might be. In exercise of this discretion, Government laid down in their order of 6th Jan 1908 that when the person whose surrender is required, is undergoing imprisonment under the Security Sections of the Cr. Pro. Code, he could not be surrendered till the expiry of his term of imprisonment, except on a special order of Govt.

(3) With the passing of the Extradition Act, the notification of

Serial No.

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20th July 1907 has been repealed (See Section 22 of the Act). Consequently the G.O. of 6.1.08 passed in virtue of the discretion vested in Govt. under para 3 of the notification of 20.7.07, cannot also be deemed to have no longer any operative force.

(5) The surrender of persons to foreign India is now governed by Sections 8 and 12 of the Act. Section 12 is in the nature of an exception to Section 8, in that it provides that a person undergoing a sentence under any Conviction in Mysore shall not be surrendered under Section 8, except on the Condition of re-surrender. The provisions of this Section are identical with those of Section 11 of the Indian Extradition Act, 1903. It has been held in 23 Cal 493, that a person charged or in prison under the Security provisions of the Cr. Pr. Code would be a person accused of an offence and the order of detention would Come within the provisions of Section 11. Agreeably to this decision, an explanatory note to Section 11 is added in the Extradition Manual, Madras (See page 90) that imprisonment under the Security Sections of the Criminal Procedure Code does not Come within the Scope of this Section. The Govt. of Madras have also canned

-- Words not in a Conviction

(See also 20 Mys C&R 44)

NOTE—Contn. Sheet.

Re. the Surrender of accused persons undergoing imprisonment under Security provisions of Cr.P.C

Cts File No. 79 of 1937.

General and Revenue Secretariat

Serial No.

A Circular in June 1933 ~~was~~ where an application for extradition of any such person is applied for, it should be complied with unconditionally, as it falls ~~outside~~ outside the scope of Section 11. (See flag X, in Courts File 76-34).

It seems therefore that the same procedure will have to be followed here also, whenever a requisition is received for the surrender of persons undergoing imprisonments under the Security provisions of the Cr.P.C. code.

BKR 6.8.38

Chief Secy)

MS 8/8/38

1st Member)

BKR 8.8

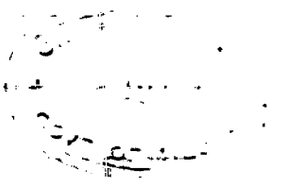
The Addl Secy will also note on this

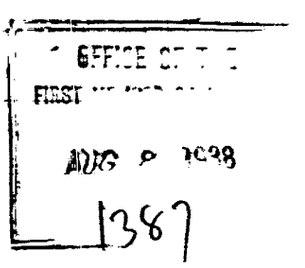
MS 15/8

MS 16/8

BKR 16.8

Addl Secy)





(8) According to section 7 of the Indian Extradition Act, where the Political Agent of a State issues an extradition warrant addressed to a District Magistrate of any district, such Magistrate shall act in pursuance of such warrant. There is an exception to this in section 11 which provides that a person accused of an offence or undergoing sentence under any conviction in British India, shall not be surrendered in compliance with a warrant issued under section 7 except on the condition that such person be re-surrendered on the termination of his trial.

(9) It has been held in a number of decisions in British India that a person when called upon to give security under the preventive sections of the Code of Criminal Procedure cannot be said to be a person accused of an offence (123 Cal 493, 50 cal 985.) It has also been held that the order of detention passed by a Magistrate under section 123 of the Code of Criminal Procedure on failure to give security is not a conviction on an offence and that the detention in prison cannot be said to be a sentence of imprisonment on conviction. (A.I.R. 1932 All 680; 9 Patna 131; 36 Indian Cases 496; 66 Indian Cases 191; / Burma 364; 27 Madras 525; 20 Mysore Chief Court Reports 44). Consequently it follows

that a person charged or undergoing imprisonment under the security sections of the Code of Criminal Procedure would not come within the purview of section 11 of the Extradition Act. (vide Muddiman's Extradition Act, page 41). Accordingly, the Government of Madras ordered that imprisonment under security sections of the Code of Criminal Procedure does not come within the scope of this section, and a foot-note to that effect has been added under section 11 at page 90 of the Madras Manual of Procedure relating to Extradition. This position has been reaffirmed by the Madras Government in their order of 29th June 1933. They have directed in that order that when an application for extradition of any person undergoing imprisonment under security sections of the Code of Criminal Procedure is made, it should be complied with unconditionally as it falls outside the scope of section 11. There is no resurrender in such cases. Once a person is imprisoned, he must continue to serve the term and there can be no suspension of the sentence except under special provisions of law such as in the case of ~~trial~~ bail, the power of Government under section 401 Criminal Procedure Code. There is a provision under Sub-section 2 of section 11 according to which the sentence of a person on conviction shall be deemed to be suspended until the date of his resurrender This as already stated applies only to cases of persons

Procedure for Surrender of accused persons undergoing imprisonment under provisions of Cr.P.C

General and Revenue Secretariat

CS File No. 79 of 1937. [App. F. III–2

Serial No.

OFFICE OF THE FIRST MEMBER OF COUNCIL
DEC -6 -1938
No. 5[illegible]

not come back to serve the remaining period of his detention. This would not matter much and public justice will not suffer since the order of detention is merely a preventive one and not a punishment on conviction as it were, and since he will be in detention as an under-trial prisoner outside the State, the object of the order under preventice sections would continue to be satisfied. If he returns to the State after the trial outside, the original order of detention under section 123 Cr. P. Code will not take effect and if it is found that his conduct has not improved and security should be taken from him, fresh proceedings should be instituted.

1st Member) CL. 5/12/38

PS) I agree.

Hon 11/12

CL 12/12/38

HH) For favour of perusal

BKR PS) 12.12.38 12/12

Chief Secy) HH) Please put up a draft.

Hon Resident BKR 13.12

CHIEF SECRETARY. 12 DEC 1938 GOVT. OF MYSORE.

NOTE—Contn. Sheet.

Re. the surrender of persons undergoing imprisonment under the Security Sections of Cr. P.C.

Cls File No. 79 of 1937. | General and Revenue Secretariat

Serial No.

Submitted with a draft

(If approved, instructions to the Dist. Magistrates and the I.G. of Prisons may issue after the issue of a letter to the Residency)

4439

Submitted for orders as to whether the draft in the file may issue.

Yes.

Dewan)

No

19-12-38

P.S.no. 27 of 38.

18

App. F VI G 10.

Government of His Highness the Maharaja of Mysore.

GENERAL AND REVENUE DEPARTMENTS

Surrender to British India

Passes orders in the matter of _____ of accused persons undergoing imprisonment in the State Jail under the Security Sections of the Criminal procedure Code.

G. O. No. P 4380-9 | Cts 149-38-3 DATED 14th February 1939.

May this be

i. printed ? Yes

ii. treated as a standing order ? Yes

iii. published in the Gazette English Part ?

iv. translated ?

v. placed at the disposal of the press ?

iv. published in the Gazette Kannada Part ?

} No.

Issued No. P 4490/Secl & 21.2.39 to the Supdt. Govt. Prtg.

Submitted for orders

Can 20/2 [illegible]

Say May be printed & treated as a Standing order [illegible] BKR 20/2

Press Srs

19

General and Revenue Secretariat | Cts File No. 79 of 1938 | [App. F. III—2

Serial No.

From

The Secretary to the Hon'ble the Resident

No F 14 (16) 37 Judl Dt 15-3-39.

Forwards a Copy of Proceedings of the Govt of Madras Dt 23-1-1939 Re the Procedure for the Surrender of Accused Persons undergoing imprisonment under the Security Sections of the Cr. P.C.

If approved, this may be recorded with previous papers

BKR
17-3

Cfor
17/3

NOTE—Contn. Sheet.

WD 0544—GPB—30,000—2-9-83

(4

GOVERNMENT OF HIS HIGHNESS THE MAHARAJA OF MYSORE

General and Revenue Secretariat

No. Rel 779 ~~CS 79-37-14~~ 220

Dated, Bangalore, ~~21st December 1938.~~

From Rajasevaprasakta
B.T. Kesaviengar, Esq., B.A.
Chief *Secretary to the Government of His Highness the Maharaja of Mysore.*

To

The Secretary to the Hon'ble the Resident in Mysore,
Bangalore.

Sir,

Subject:- Procedure for surrender of accused persons undergoing imprisonment under the Security Provisions of the Code of Criminal Procedure.

With reference to your letter No.F.14(46)-37/R.O.I dated 9th July 1938 on the above subject, I am directed to state that the Government of Mysore have no objection to follow the same procedure as has been prescribed in this behalf by the Government of Madras in their Order No.2237 dated 29th June 1933.

I have the honour to be,
Sir,
Your most obedient servant,

B.K. Ramakrishnaiya
for Chief Secretary to Government.

Aga/2.

7

PROCEEDINGS OF THE GOVERNMENT OF HIS HIGHNESS
THE MAHARAJA OF MYSORE.

- - - - -

ORDER NO. P4389-9 CS-~~79-37-15~~ 44-38-3

Dated, Bangalore, the 14th February 1939.

Government are pleased to direct that when the surrender to British India of an accused person who is undergoing imprisonment in the State Jail under the Security Sections of the Code of Criminal Procedure, is given effect to by the concerned officers of the prisons Department, in pursuance of warrant issued by Government for the said surrender under the provisions of the Mysore Extradition Act, such surrender should be made unconditionally, i.e., without insisting on a resurrender of the accused to the State prison for serving the unexpired portion of the sentence.

B K Ramakrishnaiya

Chief Secretary to Government.

To

The Inspector-General of Prisons in Mysore.
The Inspector-General of Police in Mysore.
The District Magistrates of Districts.

S/12.

The reply to this communication should be addressed to the Secretary to the Resident in Mysore, Bangalore, by designation and not by name.

~~XXX~~ No. F. 14(46)-37 ~~XXX~~ Judl. Encl. 1

5777/P C579-37-16

FROM

THE SECRETARY TO THE HON'BLE THE RESIDENT IN MYSORE.

To

The Chief Secretary to the Government of

His Highness the Maharaja of Mysore, Bangalore.

CHIEF SECRETARY. Rec'd 15. MAR. 1939 GOVT. OF MYSORE.

Dated Bangalore, the 15th March 1939

Procedure for the surrender of accused persons undergoing imprisonment under the Security provisions of the Code of Criminal Procedure.

SIR,

I am directed to refer to the correspondence ending with your letter No.Pol.779/Cts.~~79-38-14~~, dated the 22nd December 1938.

2. I enclose for information a copy of the Proceedings of the Government of Madras, No.364-Home, dated the 23rd January 1939.

I have the honour to be,

Sir,

Your most obedient servant,

for SECRETARY TO THE RESIDENT.

KK

GOVERNMENT OF MADRAS.

Home Department.

G.O. No. 364, 23rd January 1939.

Extradition-From Mysore-Surrender of persons undergoing imprisonment under the security provisions of the Code of Criminal Procedure-Letter from the Hon'ble the Resident-Communicated.

READ-the following papers:-

I

G.O.No.2237,Law(General), dated 29th June 1933.

G.O.No.2987, Home, dated 13th June 1938.

G-O.No.4442, Home, dated 12th September 1938.

G.O.No.5620, Home, dated 22nd November 1938.

II

Letter from the Secretary to the Hon'ble the Resident in Mysore, to the Government of Madras, Home Department, dated Bangalore, the 16th January 1939, No.F.14(46)-37/R.O.I.

[Procedure for surrender of accused persons undergoing imprisonment under the security provisions of the Code of Criminal Procedure.]

I am directed to forward for information a copy of/letters the noted below:-

(i) Letter to the Government of Mysore, No.F.14(46)-37/R.O.I, dated the 9th July 1938.
(ii) Letter from the Government of Mysore No.Pol.779/Cts. 79/38-14, dated the 22nd December 1938.

x x x

x x x

ORDER-NO.364, HOME, dated 23rd January 1939.
Communicated to all District Magistrates and the Chief Presidency Magistrate, Madras.

(By order of His Excellency the Governor)

A.R.MacEwen,
Secretary to Government.

To all District Magistrates,
" the Chief Presidency Magistrate, Madras.
Copy to the Hon'ble the Resident in Mysore, Bangalore (with C.L)

---:O:---

"C O P Y"

Superintendent, Resident's Office.

KK